

*North Dakota*  
*Class VI Primacy Application Approval*



Briefing for  
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## Purpose and Expected Outcome of Briefing

- Present the signature package requesting the Administrator to approve North Dakota's Class VI primacy application.
- Provide background on North Dakota's Class VI primacy application and summarize how North Dakota proposes to implement its Class VI program within the state.
- Request Office Director's signature for the Transmittal Memorandum and to review and approve the Action Memorandum for Assistant Administrator's signature.

## Signature Package

- Transmittal Memorandum from Office Director to Assistant Administrator, requesting the Assistant Administrator to sign the Action Memorandum and forward the *Federal Register* notices for the Direct Final Rule and Parallel Proposed Rule to the Office of Policy so the rules can be transmitted to the Administrator for signature.
- Action Memorandum from the Assistant Administrator to the Administrator, requesting signature for the Direct Final Rule.
- Copy of the Direct Final Rule and Parallel Proposed Rule to be published in the *Federal Register*.
- Concurrence from the Office of General Counsel to codify North Dakota's Class VI program into the CFR.

## Background

- In October 2011, EPA began working with the North Dakota Industrial Commission (NDIC) on its Class VI primacy application. EPA informally reviewed and commented on North Dakota's proposed Class VI regulations as well as its primacy application documents.
- On June 21, 2013, North Dakota submitted an official program revision application to add Class VI wells to its 1422 UIC program. EPA reviewed North Dakota's program revision application and published a *Federal Register* notice of North Dakota's program revision application on August 9, 2013 (78 FR 48639), which sought public comments and provided an opportunity to request a public hearing.
- EPA received five comments from three commenters. Two of the comments were outside the scope of the Class VI program and three comments were on North Dakota's regulations and the Memorandum of Agreement between NDIC and EPA Region 8. EPA worked with North Dakota to address the two comments on the Memorandum of Agreement. EPA disagreed with the comment on North Dakota's regulations.
- Because so few comments were received on North Dakota's program revision application, EPA is moving forward with a Direct Final Rule with Parallel Proposed Rule to approve North Dakota's Class VI program.
- Received written concurrence from the Office of the Federal Register (legal) to incorporate by reference North Dakota's Class VI program.
- Received written concurrence from the Office of General Counsel, Office of Policy and Office of Enforcement Compliance and Assurance to codify North Dakota's Class VI program into the CFR.

## North Dakota's Proposed Class VI UIC Program

- North Dakota's Industrial Commission (NDIC) will be the lead agency in implementing its Class VI program. The NDIC entered into a Memorandum of Understanding with the North Dakota Department of Health establishing NDIC as the lead agency to oversee Class VI wells in the State.
- NDIC developed and adopted Class VI regulations that are at least as stringent as the federal Class VI requirements at 40 CFR 146.81 *et seq.* In addition, NDIC adopted general Section 1422 requirements for public notice requirements for permits as well as procedures for drafting permits at 40 CFR 124.1 *et seq.*
- NDIC entered into a Memorandum of Agreement with EPA Region 8, which describes the provisions and arrangements between the State and EPA regarding the administration, implementation, and enforcement of North Dakota's UIC Program.
- NDIC submitted a program description that provides an overview of how NDIC will run the Class VI program, the NDIC organization and structure, a detailed description of the Class VI permitting process, state compliance monitoring program, a summary of the North Dakota enforcement procedures and sample reports and forms.
- EPA is confident that North Dakota will implement its program consistent with the federal requirements, including implementing regulations that ensure that wells used for geologic sequestration are appropriately sited, constructed, tested, monitored, funded, and closed. North Dakota demonstrated in its primacy application that it has sufficient resources and staff with the technical expertise (e.g., in geology, engineering, and modeling) that is needed to evaluate Class VI permit applications and oversee the construction, operation, and closure of Class VI wells in the state.
- The NDIC regulations for transitioning from Class II to Class VI were carefully reviewed by EPA to ensure that they are consistent with the Federal requirements at 40 CFR 144.19.

## Significance of this Action

- In taking this action, approving North Dakota's Class VI Primacy application, EPA is supporting North Dakota in increasing its ability, capacity and infrastructure to comprehensively address Carbon Capture and Storage (CCS) at the State level –where North Dakota is in the best position to address issues unique to their state including pore space ownership, mineral rights, and long term liability.
- This action is in-line with EPA's efforts to support strategies to overcome the barriers to the widespread, cost-effective deployment of CCS in the U.S. as identified in the recommendations of the Interagency Task Force on Carbon Capture and Storage 2010 Report.
- Once North Dakota receives primacy for Class VI, NDIC will be able to implement the program immediately by working with C12 to issue a Class VI permit.

## Next Steps

- Once OGWDW approves and signs the signature package, the direct final rule with parallel proposed rule will be forwarded to OW and OP for signature. (Timing: 2 to 3 weeks)
- After the Administrator signs the rules, we will publish the rules in the *Federal Register* and implement the communication strategy. (Timing: 1 to 2 weeks)
- After the 30-day comment period ends, if no comments are received, North Dakota will have primacy within 90 days of the published *Federal Register* date. (Timing: 3 months)
- If EPA receives an adverse comment(s) within the scope of the rules (directly on North Dakota's primacy application), then EPA will need to withdraw the Direct Final Rule; the parallel proposal will become effective; and EPA will publish a Final Rule (including a response to comments). (Timing: 6 to 9 months)